

3 200607.txt
4 February 5, 2008

5 10:15 a.m.

6

7 Deposition of TED MITROU, held at
8 the offices of Calinoff & Katz, LLP, 140
9 East 45th Street, 17th Floor, New York,
10 New York, pursuant to Notice, before
11 CHRISTINE MORELLA, a Notary Public of
the State of New York.

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2 A P P E A R A N C E S:

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4 THE DURST LAW FIRM, P.C.

5 Attorneys for Plaintiff

6 319 Broadway

7 New York, New York 10007

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8 BY: JOHN E. DURST, JR., ESQ.

9

10 CALINOFF & KATZ, LLP

11 Attorneys for Defendants

12 140 East 45th Street, 17th Floor

13 New York, New York 10017

14 BY: ROBERT CALINOFF, ESQ.

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2 IT IS HEREBY STIPULATED AND AGREED,

3 by and between counsel for the respective

4 parties hereto, that the filing, sealing

5 and certification of the within deposition

6 shall be and the same are hereby waived;

7 IT IS FURTHER STIPULATED AND AGREED

8 that all objections, except as to the

9 form of the question, shall be reserved to

10 the time of the trial;

11 IT IS FURTHER STIPULATED AND AGREED

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12 that the within deposition may be signed
13 before any Notary Public with the same
14 force and effect as if signed and sworn to
15 before the Court.

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2 T E D M I T R O U, called as a witness,
3 having been duly sworn by a Notary Public,
4 was examined and testified as follows:

5 EXAMINATION BY

6 MR. DURST:

7 Q. Please state your name for the
8 record.

9 A. Ted Mitrou.

10 Q. what is your business address?

11 A. 701 East Joppa Road, Towson,
12 Maryland 21286.

13 Q. Who are you employed by?

14 A. By Black and Decker.

15 Q. How long have you been employed
16 there?

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17 A. Approximately fifteen years.
18 Q. What is your current position?
19 A. Senior safety assurance manager.
20 Q. What are your responsibilities in
21 that position?
22 A. My responsibilities include
23 representing the company in any kind of
24 claims and litigation as well as
25 participating in reviewing products safety,

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1 MITROU
2 reviews that are under development.
3 Q. Have you testified before in court?
4 A. Yes.
5 Q. How many times approximately?
6 A. Once.
7 Q. Have you prepared reports in cases
8 that are pending in court before?
9 A. Yes.
10 Q. How many cases approximately?
11 A. Approximately half dozen.
12 Q. How long have you been in your
13 current position?
14 A. It will be five years, going on
15 five years.
16 Q. Before that what did you do?
17 A. I worked in development
18 engineering.
19 MR. CALINOFF: You mean at Black
20 and Decker?

21 200607.txt
21 MR. DURST: Yes.

22 Q. Going back chronologically in time,
23 can you tell me what positions you've held at
24 Black and Decker for approximately how long?

25 A. Yes. The other position that I've

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1 MITROU
2 held at Black and Decker was director of
3 reliability engineering. And the first hand
4 of the fifteen years that I worked for Black
5 and Decker I had that position which was part
6 of the development engineering department.

7 Q. How large is the development
8 engineering department at this point in time?

9 A. It's a little hard to answer. You
10 mean including clerical staff and technical
11 staff, the whole organization?

12 Q. No, including technical staff, not
13 clerical staff.

14 A. I would estimate in the order of
15 two to three hundred people.

16 Q. Where are they located?

17 A. The majority of them are located at
18 world Headquarters in Towson, Maryland. We
19 have smaller development teams in Brockville,
20 Canada, in Spinnimore (phonetic, England, in
21 Ronosa, Mexico and in China.

22 Q. Prior to going to work for Black
23 and Decker, can you describe for me the
24 various positions you've held just in
25 summary?

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2 A. Yes, and if you don't mind I'll
3 refer to my resume so I get the dates right.

4 Q. Sure.

5 A. I did bring that with me.

6 Q. Could we mark that as an exhibit?

7 A. Sure.

8 Q. If you don't mind.

9 MR. CALINOFF: Mitrou A.

10 MR. DURST: I guess it would be
11 Plaintiff 1.

12 A. Okay. From 1990 to 1993 -- well,
13 first, I'll say that my entire career, if I
14 can generalize, has been in the area of
15 product testing, reliability and safety. My
16 positions before Black and Decker were from
17 1990 to 1993, I was director of quality
18 assurance for a defense company named Koll
19 Morgen, they made periscopes for the U.S.
20 Navy.

21 From 1988 to 1990, I was director
22 of an electrical engineering lab called
23 Spring Born Laboratories that did independent
24 product analysis.

25 For seven years, 1981 to 1988, I

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2 was director of quality assurance for a high

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3 tech company named Teleco, that made
4 equipment that assisted in off shore oil
5 explanation.

10 And my first job out of school from
11 1970 to 1975, as a senior engineer was for
12 Underwriters Laboratories, where I was a
13 safety engineer whose classification was
14 primarily power tools.

15 Q. Describe your educational
16 background?

17 A. I have an electrical degree from
18 Marquette University in 1970.

19 Q. Is that a BS?

20 A. That's a BS, bachelor of science,
21 yes. And I also hold a professional
22 engineering license.

23 Q. Do you have any other educational
24 advance degrees or advance certifications
25 other than professional engineer and the BS

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2 degree?

3 A. It's not on my resume, I had, and I
4 don't even recall now, perhaps twenty or
5 twenty-three credits toward a master's in
6 business administration from the University
7 of New Haven, but when I transferred jobs I

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8 didn't complete that. And I'll add, of
9 course, since 1970 to now I've attended
10 numerous seminars in my field.

11 Q. Are you a member of any
12 organizational bodies, governmental standards
13 or otherwise or have you been in the past?

14 A. I have represented industry in the
15 power tool area in the PTI, which is power
16 tool institute, with UL, and the IAC, which
17 is the industry advisory counsel. I was also
18 the director for RAMS, which is a reliability
19 organization, and would participate and give
20 instructional presentations yearly for
21 probably eight or ten years.

22 Q. In your studies at Marquette, were
23 there any courses on safety engineering given
24 or something of that substance?

25 MR. CALINOFF: Per se that's the

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2 course?

3 MR. DURST: No, not per se but of
4 that substance focusing on safety.

5 A. No.

6 Q. Portions of courses did deal with
7 that though?

8 A. There was -- I can't remember any
9 technical courses educationally that back in
10 1965 to '70 focused on safety. My initial
11 experience and training in safety was when I

12 joined Underwriters Laboratories whose entire
13 work field is safety orientated.

14 Q. Do you recall any courses that you
15 have taken from graduation from school up to
16 the present time, do you recall the names of
17 any such courses or can you describe any such
18 courses?

19 A. Well, I've taken courses in
20 forensics engineering, I've taken courses in
21 appropriate warning development from the
22 University of Wisconsin, I've taken seminars
23 in reliability engineering as well as given
24 seminars in reliability engineering. As far
25 as actual names of other courses, I don't

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2 recall at this time.

3 Q. Can you recall any courses that you
4 took dealing with, specifically dealing with,
5 the guarding of mechanical equipment?

6 A. I didn't have any educational
7 courses dealing with the guarding of
8 equipment.

9 Q. At Underwriters Laboratory was
10 there any educational process with regard to
11 guarding of mechanical equipment?

12 A. Yes, of course. I worked on all
13 power tools while I was at UL, and started as
14 an apprentice. And all of the UL standards
15 address guarding and we were required to
16 study and learn all those requirements, and

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17 also work under the direction of a senior
18 engineer at the time who instructed us, and
19 things related to safety not only in guarding
20 but electrical properties, testing and
21 everything else.

22 Q. with regard to reliability
23 engineering, does that embrace the subject of
24 machine guarding?

25 A. Well, it does in a sense that any

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2 time there is a part of a product, a guard or
3 another part of a product whose failure could
4 cause a safety incident then its reliability
5 becomes consistent with the requirement for
6 safety.

7 Q. Have you ever in the past been
8 involved in the actual design of mechanical
9 equipment and including the guarding of
10 mechanical equipment?

11 A. Well, by trade I'm not a designer,
12 but by trade I've participated in literally
13 hundreds of design reviews in which guarding
14 as well as other aspects of products are
15 discussed, critiqued and evaluated.

16 Q. Did you do that at Black and
17 Decker?

18 A. Yes.

19 Q. Did you have design reviews at
20 Black and Decker?

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21 A. Yes.

22 Q. Can you describe what that is?

23 A. Well, the design reviews that I
24 attend are related to the safety aspect of
25 the products. I do not, in my role, attend

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2 the design reviews, every design review that
3 goes on with the development tool. But from
4 a safety standpoint the process that Black
5 and Decker has is from the concept of a
6 product all the way through production
7 release. There are a series of safety
8 reviews that are structured and attended by
9 certain required people that assess the
10 safety of the product.

11 (Plaintiff's Exhibit 1, Resume,
12 marked for identification, as of this
13 date.)

14 Q. Now, sir, did you get an
15 opportunity to review a video that was
16 prepared by The Durst Law Firm in this case?

17 A. Yes.

18 Q. When did you review that, how many
19 times?

20 A. I didn't count them. I probably
21 looked at it at least twice, the most recent
22 being this past week sometime.

23 Q. Are you familiar with the product
24 depicted in that videotape?

25 A. Yes.

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2 Q. Would you describe your
3 familiarity, the basis of your familiarity
4 with it?

5 A. I recognize it as a product made by
6 Dewalt, it's a reciprocating saw, it's model
7 409, DW409P reciprocating saw.

8 Q. Hence forth I will describe that as
9 the product, product or the saw or the
10 reciprocating saw.

11 A. You know what, I think, I'm sorry,
12 I mixed my numbers up, I apologize. It's the
13 DW304P.

14 Q. Is that different from the 304K?

15 A. The K just stands for kit, that it
16 comes in a box.

17 Q. Now, I will refer to that hence
18 forth as the product.

19 A. Yes.

20 Q. Can you describe the design history
21 of that product, when it was designed, what
22 its predecessor model was and when it was
23 first produced?

24 MR. CALINOFF: Objection to form.

25 You can answer.

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2 MR. DURST: I'll rephrase it.

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3 Q. When was that model initially put
4 on the market?

5 A. Approximately 2004.

6 Q. Did it have a predecessor model
7 that was similar to it upon which it was
8 based?

9 A. Yes.

10 Q. What was that model?

11 A. DW303.

12 Q. Do you know when that predecessor
13 model was initially put on the market?

14 A. I don't know when the original
15 design was put on the market at this time.
16 It was at least twenty years ago.

17 Q. What is the difference between the
18 303 and the 304?

19 A. The 303 does not have a mechanism
20 on the front end that allows you to put the
21 blade in any position other than the normal
22 cut position.

23 Q. Describe what the new mechanism can
24 do that the old one couldn't do?

25 A. The new mechanism will allow you to

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2 put the blade in any one of four positions
3 down the teeth, facing down, facing up or
4 left or right.

5 Q. I'm going to show you what has been
6 previously marked Defendant's Exhibit C of
7 1/22/08 for identification. And ask you does
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8 that appear to depict the 304 model?

9 A. The 304P.

10 Q. Was there a 304 without a letter?

11 A. Yes.

12 Q. When was that product made?

13 A. The DW, even though this sounds a
14 little illogical we'll blame it on the
15 marketing people, the DW304 to my knowledge
16 was the very first product that used the
17 design without that cage. In other words,
18 the normal reciprocating design, with the
19 blade in the traditional position for
20 cutting.

21 Q. In other words, it wouldn't turn
22 left and right?

23 A. It wouldn't turn left and right;
24 that's correct.

25 Then the DW303 came along, even

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2 though it has a lower number. And the
3 difference in the 303 and 304 I believe were
4 in the size of the motor and possibly the
5 reciprocating length might have been
6 different, but they were generally the same
7 product.

8 Then when the 304P came out, which
9 was around 2004, the feature for the blade to
10 be placed in one or four positions was added.

11 Q. Let's go ahead and mark, if you

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12 would, on this Defendant's Exhibit C, if
13 that's all right, with an arrow
14 pointing to --

15 MR. CALINOFF: Let's do that and
16 then we'll mark it as Plaintiff's 2.

17 MR. DURST: That sounds confusing.

18 MR. CALINOFF: Just a copy of that
19 exhibit so it's fine to do that.

20 MR. DURST: It's going to be a
21 confusing record. I'm easily confused.

22 Q. We're going to go ahead and mark it
23 first as Plaintiff's Exhibit 2, which is
24 exactly the same as Defendant's Exhibit C of
25 1/22/08.

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1 MITROU
2 (Plaintiff's Exhibit 2, Copy of a
3 Photograph, marked for identification,
4 as of this date.)

5 Q. Sir, I'm going to ask you have you
6 ever testified either in deposition or trial
7 or otherwise with regard to the 304 the 304P
8 in the past?

9 A. No, sir.

10 Q. Have you ever testified with regard
11 to the 303 in the past?

12 A. No, sir.

13 Q. Have you ever testified with regard
14 to 304 without the P?

15 A. No, sir.

16 Q. Now, if you wouldn't mind just
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17 drawing with an arrow and maybe -- what did
18 you call it, the cage, what did you call this
19 part in the front?

20 A. I referred to it as the cage.

21 Q. Is that what the K stands for?

22 A. No.

23 Q. That's kit.

24 MR. CALINOFF: John, can we ask him
25 to circle the cage, only because there's

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2 already an arrow there.

3 Q. Well, the arrow is not pointing to
4 the cage, is it?

5 A. No, it's pointing to the neck.

6 Q. Rather than mark it up do a little
7 arrow pointing to the cage area.

8 A. That's probably not the name on the
9 parts list but for our discussion.

10 Q. Perfect. You've drawn an arrow
11 with the word cage.

12 Is that part removable?

13 A. No. Anything is removable.

14 Q. It's not intended to be removed?

15 A. It's not intended to be removed.

16 There's no way that the user would ever have
17 any reason to remove that though.

18 Q. With regard to the neck area, is
19 that the same design of the neck that was in
20 the 303 model?

21 A. There are approximately 3.5 million
22 tools that we've sold with that neck design.

23 Q. The difference in all those tools
24 would be -- how many models is that?

25 A. The ones that I described before

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2 there's also a 305 and a 306, which also the
3 difference are either in the size of the
4 motor maybe ten amps versus eight amps or the
5 stroke length which is an inch an eight or
6 something else. But the fundamental design
7 of the front end of the tool which is what
8 we're all talking about is identical.

9 Q. Do they use a mold or something to
10 make that?

11 A. It's just been a very reliable and
12 safe design for us all its life.

13 Q. The 304 without the letter --

14 A. Yes.

15 Q. -- when was it first put on the
16 market?

17 A. At least twenty or twenty-five
18 years ago.

19 Q. Are the dimensions for the 303 and
20 the 304 necks the same as the 304P?

21 A. Identical.

22 Q. With regard to the front portion
23 which you called the cage.

24 A. Yes.

25 Q. Does that cage dimension differ in
Page 18

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1 MITROU

2 the 304 and 303?

3 A. I'm not sure. It's extremely
4 close, if there is any difference it's by
5 design different, it looks differently than
6 that because the nature of the mechanism.
7 I've never actually compared all the
8 dimensions but they are certainly very
9 similar in overall footprint.

10 Q. Have you reviewed any literature
11 with regard to the design of the 303, 304, or
12 304P and the configuration of the neck, have
13 you reviewed any literature talking about
14 that neck?

15 A. No, sir.

16 Q. When was the 303 designed?

17 A. I don't know. Sometime, this is
18 not a sarcastic answer, sometime between the
19 304 and 304P it was introduced.

20 Q. So the design of the neck was first
21 decided upon with the 304?

22 A. Yes, sir.

23 Q. Do you know who it was that was
24 involved in the design of the 304?

25 A. No, sir, I don't.

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2 Q. You had no input on the design of

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3 the 304?

4 A. No, sir.

5 Q. In fact, the 304, 303 had been
6 designed before you even came to the company,
7 would that be accurate?

8 A. The 303 and 304 was but not the
9 304P.

10 Q. When the 304P was designed, did you
11 play any role in the design of that product?

12 A. Yes, I would be involved in the
13 safety review of that product.

14 Q. The safety review was that done
15 with any written review material?

16 A. Typically there are minutes to
17 safety reviews.

18 Q. Have you looked to see if there
19 were any minutes of safety review of the
20 304P?

21 A. No, sir.

22 REQ MR. DURST: I would call for
23 production of any minutes or other
24 written documents with regard to the
25 review of the safety of the 304P and

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2 call for production of that.

3 MR. DURST: off the record.

4 (Off-the-record discussion held.)

5 Q. Now, when you evaluated this did
6 you do it as a team with other individuals
7 evaluating it as well?

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8 A. Safety reviews are always with a
9 team, yes, sir.

10 Q. Who else participates in that?

11 A. I don't remember the names of the
12 people, but typically the people that
13 participate are people from our safety
14 compliance organization such as the UL
15 representative within the company, the design
16 engineer, the marketing person, a person from
17 litigation, in other words, from my
18 department, the program manager which is the
19 overall person that's managing the program,
20 so there's at a minimum that body of people.

21 Q. Who was the design engineer for the
22 304P?

23 A. I'm not sure. I did ask that
24 question though and was given two or three
25 possible names, all of which are retired at

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2 this point in time.

3 Q. Well, can you tell me what those
4 two or three possible names were?

5 A. I can. I can tell you one was Bill
6 Sauwerine.

7 Q. How do you spell that?

8 A. I'm not sure, S-A-U-W-E-R-I-N-E,
9 that's a little bit of a guess. I don't
10 recall the other two. I can provide that for
11 you but I just don't recall the other two.

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12 Q. I would ask then if we can leave a
13 space in the record, maybe three spaces, for
14 the names of the individuals, if you wouldn't
15 mind filling those in.

16 A. _____

17 —

18 —

19 I don't mind. Again, the information that
20 I'm giving you is secondhand, it was to the
21 best of the knowledge of the engineering
22 people that I talked to.

23 Q. If you could look at the minutes,
24 would that clarify the question?

25 A. It certainly would help, yes, it

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2 certainly would help.

3 Q. If you clarify it by looking at the
4 minutes first then just fill in the one name,
5 the actual person's name.

6 A. _____.

7 Q. REQ I'd also call for the last
8 known address of that individual, I suppose
9 you have it in retirement records and so I
10 would like to know what his current home
11 address is. All right. I would ask that
12 probably in writing. Leave spaces for an
13 address.

14 A. 4

15 Q. Is the person from UL compliance
16 still with your company?

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17 A. I don't recall who the person back
18 in 2004 was that would have been representing
19 this, so I really can't answer that.

20 Q. You were the individual from your
21 department that actually did the review or
22 did you have someone else?

23 A. At the time I was director of
24 reliability engineering, I was in that role
25 not my litigation role. And either I

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1 MITROU
2 attended the safety reviews personally or if
3 I was in conflict or something I had a group
4 of reliability engineers that would also
5 attend them. So whether or not I attended
6 every safety review of the 304P I would
7 actually have to look back and see myself.

8 Q. Do you recall the process though of
9 actually reviewing this product?

10 A. Oh, yes, that's well built into the
11 Black and Decker development process.

12 Q. Describe what the safety review
13 entailed?

14 A. The safety review entails a
15 discussion of the overall design, soliciting
16 input from the backgrounds, the diversified
17 backgrounds of the people that are there,
18 typically the safety and litigation history
19 of the predecessor of the product under
20 review is reviewed, and if there is any

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21 motivation to make any changes based upon
22 history of the product in the new design or
23 the next iteration of the design those would
24 be discussed and the merits would be
25 evaluated, and within Black and Decker a

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1 MITROU
2 project cannot move forward through
3 development and released without the safety
4 team giving its approval.

5 Q. Are there any outside consultants
6 who are asked to review with regard to this
7 particular product?

8 A. Outside of Black and Decker you
9 mean?

10 Q. Yes, sir.

11 A. Typically not. For this tool
12 highly likely there was not because we have a
13 long history of background and experience
14 within Black and Decker.

15 Q. Now, do you recall whether any
16 consideration was given to changing the
17 design of the neck for the purpose of
18 providing any more of a guarding quality for
19 the blade?

20 A. I don't recall a specific
21 discussion involving that. However, there is
22 no doubt in my mind that a discussion about
23 the guarding as well as all the other aspects
24 of the tool took place. And considering that
25 we had at the time approximately two million

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2 of these in the field without any significant
3 issues from a safety standpoint, there would
4 have been little motivation to make any
5 changes.

6 Q. Had you ever received any reports
7 of any users injuring their hands on the
8 blades of the 304 and 303?

9 A. I can't pinpoint that answer as of
10 2004. I can describe to you in hindsight
11 claims that took place with the product, but
12 I can't recall from a specific meeting in
13 2004 a discussion or event took place, but
14 that is a routine discussion that takes place
15 in every safety review.

16 Q. Do you know if there were any
17 reports of individual users having their hand
18 cut from the blade of the 303 or the 304,
19 whether it resulted in a lawsuit or a claim
20 or not but reports of such things?

21 A. The only -- not looking at claims
22 history which is clearly identifiable, the
23 primary issue that occurred, although very
24 infrequently, was more often people getting
25 their finger pinched in the reciprocating

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2 mechanism rather than being cut from the

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3 blade.

4 Q. Well, when you say the
5 reciprocating neck, what portion of the tool
6 are you referring to?

7 A. The blade clamp area which is
8 inside this. Keep in mind that prior designs
9 did not have this entire covering on here,
10 and there is a reciprocating mechanism that
11 the blade is attached to. And people would
12 have a tendency to misuse the product, and
13 sometimes a finger would go in this area
14 here, I'm pointing to an area that is in the
15 area of reciprocating mechanism, and they
16 would end up having it pinched as the blade
17 clamp went backwards.

18 Q. You mean when they were trying to
19 change the blade?

20 A. No, when they were -- plumbers
21 would sometimes hold a pipe with their left
22 hand and actually guide with their thumb the
23 saw with their left hand thumb and hold it
24 back here, and sometimes their thumb would
25 actually slip into the side of the saw.

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2 Obviously, that's not how the saw is designed
3 to be used, but people don't always grasp
4 these the way they are intended to be
5 grasped.

6 Q. How are they intended to be
7 grasped?

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8 A. The product is intended to be
9 grasped around the neck area.

10 Q. Is the palm of the hand supposed to
11 be on the top or the bottom or either of the
12 neck?

13 MR. CALINOFF: Objection to form.

14 MR. DURST: I'll rephrase it.

15 Q. Does it matter whether they use the
16 palm of their hand, assuming they are holding
17 it with the left hand, does it matter whether
18 they put the palm of their hand on the bottom
19 of the neck or on the top of the neck or I
20 guess it depends on what they are doing,
21 right?

22 A. These saws are used in every
23 orientation and sometimes multiple
24 orientations during the same cut. And it's
25 most important to maintain control of the saw

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1 MITROU
2 by wrapping your hand around the neck. Now,
3 your hand can wrap it around the neck with it
4 in any orientation.

5 Q. The 303 and 304 when you look at
6 this cage, is it possible for you to below
7 here on the white portion of this draw a
8 depiction, it doesn't have to be accurate,
9 but a depiction of the configuration before
10 the 304P, just to give us an idea of what it
11 looked like?

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12 A. Well, yes, I can. There
13 historically are two versions of this area,
14 and one would have a similar piece like this,
15 and this is the front of the tool, where this
16 is basically, I'll bring the blade out like
17 this, these are the teeth on the blade, where
18 this is in an open area.

19 Q. Indicating the cage area?

20 A. Indicating the cage area. Let's
21 say that's the clamp on the blade and this is
22 the reciprocating mechanism, and this is the
23 shoe, if you will, that you press against the
24 work as you're using the product. And
25 because we had, even though it was relatively

1

33

1 MITROU
2 few and minor, people who end up getting
3 pinched in here --

4 Q. Just go ahead and put a P with an
5 arrow towards the area that you're referring
6 to.

7 A. Pinched here. Then subsequent
8 models of the product actually closed up this
9 entire area here, maybe I'll draw another one
10 and I don't say that drawing is my forte,
11 where now this area was actually closed up
12 with metal, so that it would mitigate the
13 likelihood of someone incidentally slipping
14 their finger and getting it pinched.

15 MR. CALINOFF: John, I didn't
16 object at the time of the question
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17 because I thought perhaps it would be
18 answered here. Is your question was
19 there a different size and shape, it
20 assumed that it was different other than
21 the configuration. We can go off the
22 record and I can ask the witness to
23 leave the room if you'd like me to.

24 MR. DURST: No.

25 MR. CALINOFF: Off the record.

□

34

1 MITROU

2 (off-the-record discussion held.)

3 Q. The dimensions of the cage areas
4 for both the 303 which I assume is the
5 drawing that says closed, and the 304 which
6 is the drawing that says pinched, the
7 dimensions of this cage area remained
8 approximately the same?

9 A. That's correct; yes.

10 Q. The configuration was approximately
11 the same?

12 A. Yes, sir. I also want to make it
13 clear that there could be a bend of 303s and
14 304s some of which might have been closed,
15 some might have been opened, and I don't know
16 when that transition took place.

17 Q. When you received reports of
18 individuals having their fingers pinched, was
19 that when the blade was moving or when the
20 blade was stopped?

200607.txt

21 A. It would have to be moving.

22 Q. Now, during the design review do

23 you know if any consideration was given to

24 providing some form of a guard along the area

25 of the neck, the end of the neck by the cage

35

1 MITROU
2 extending downwards, to prevent someone's
3 hand from moving forward and contacting the
4 blade in the event of a kickback?

5 MR. CALINOFF: Objection to form.

6 A. At the time the 304P was designed
7 having approximately two million of these in
8 service without any significant injury really
9 did not motivate Black and Decker to fix the
10 problem that it didn't have.

11 Q. Was any consideration given to that
12 possible design though?

13 A. Again, I will say that as a normal
14 course of any safety review all guarding is
15 reviewed. If I can recall an actual
16 conversation of this meeting some eight years
17 ago, I can't say that I do sitting here.

18 Q. If such a possible design change
19 was considered, would that be something that
20 would have typically been recorded in the
21 minutes of the design review?

22 A. Can you restate that somehow?

23 MR. DURST: Can you read that back.

24 (Record read.)

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□

36

1 MITROU

2 review because the safety review and the

3 design review are two distinct meetings.

4 which --

5 Q. I amend my question accordingly.

6 A. So your question refers to the

7 safety review?

8 Q. Correct.

9 A. In a safety review in a discussion

10 of a guard like this the question would be

11 asked by someone like myself or another

12 individual is the guarding adequate. If

13 there was a question in that safety review

14 about the adequacy of a guard or any other

15 safety feature, it would be minuted, put in

16 the minutes, for an action by the safety

17 review at the next meeting. And at the next

18 meeting the design team would have come back

19 and said, okay, there was a concern about

20 this area, here's our proposal, here's our

21 three proposals, we have adopted this one,

22 the safety review would say that's acceptable

23 and it would be signed off and we would go

24 forward.

25 If we had the discussion at the

□

37

1 MITROU

2 304P meeting and everyone looked at this and

200607.txt

3 said, well, you know guys, we had two million
4 of these out for the last ten years and we
5 don't have any safety issues, that comment
6 probably wouldn't have been recorded.

7 Q. Absent of motivation such as a
8 reported injury or a claim --

9 A. Yes.

10 Q. -- is it common to retain a design
11 where guarding might be otherwise considered?

12 MR. CALINOFF: Objection to form.

13 A. I don't think that Black and Decker
14 would spend money on changing designs of
15 really anything unless there was a motivating
16 force, whether a competitive factor, a
17 marketing factor, certainly a safety factor.
18 You know, there's a saying, if it ain't broke
19 don't fix it. And when we're comfortable
20 that we have adequate guarding especially on
21 a product, sometimes changing it can hurt you
22 rather than help you.

23 Q. Do you know if there were any
24 possible hurts as you mentioned that were
25 considered with regard to changing the design

□

38

1 MITROU
2 of the neck? Can you make any sense of that?

3 MR. CALINOFF: I didn't get that
4 question. I'm sorry, could you read it
5 back. The word was hurts?

6 MR. DURST: I'm just carrying on
7 his terminology the word hurts.

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8 A. The context in which I said it can
9 hurt you more than help you, when I said it I
10 was thinking of you might change the guard or
11 some part of the tool and create more of a
12 safety issue than you had when you didn't
13 have one before that you didn't see or didn't
14 foresee or perhaps it caused somebody to try
15 to use or grasp a tool in a way that he
16 wouldn't have had you stuck with an original
17 guard. So the answer to your question is,
18 no, although I don't really remember your
19 question now.

20 Q. Let me ask you a question. With
21 regard to reciprocating saws, other
22 manufacturers make them as well?

23 A. Yes.

24 Q. What are the names of the other
25 manufacturers that you know that make a

□

39

1 MITROU
2 similar reciprocating saw?

3 MR. CALINOFF: Similar, what do you
4 mean?

5 MR. DURST: Well, similar in
6 purpose.

7 A. Well, I think the most recognizable
8 name in this particular market segment is the
9 Milwaukee Sawzall.

10 Q. Are there any other manufacturers
11 as well?

200607.txt

12 A. Yes, there's Porter Cable makes a
13 product also.

14 Q. Anybody else that you can think of?

15 A. I think those are the big players,
16 I'm not sure who else might also be making
17 them for the professional market any way.
18 Those are pretty much the big players in the
19 professional market.

20 Q. With evaluating the design and the
21 safety review, do you take into consideration
22 what other manufacturers might be doing with
23 regard to their saws and the guarding of
24 their saws?

25 A. Yes.

□

40

1 MITROU

2 Q. Do you know if any review was given
3 of the Milwaukee saws or the Porter Cable
4 reciprocating saw?

5 A. I don't recall, as I've said,
6 before the specific meeting back which would
7 probably be in 2002 or 2003 when this was
8 being developed, I don't recall the
9 discussion and those particular meetings.
10 But I can say that as a matter of practice at
11 Black and Decker we look at all the features
12 both marketing, safety, etc., of competitive
13 products during our design development
14 process.

15 Q. What effort does Black and Decker
16 make to find out if there have been any

200607.txt

17 reports of injuries regarding power equipment
18 such as the 303, 304 and 304P?

19 MR. CALINOFF: Objection to form.

20 I'm not sure what you mean by that,
21 John.

22 Q. what efforts, checking literature,
23 checking consumer products safety reports or
24 whatever is done to review whether or not
25 there have been injuries?

□

41

1 MITROU

2 A. Well, we have an electronic
3 database that tracks all formal claims in
4 Black and Decker. we have a one eight
5 hundred call center that keeps I believe
6 eighteen months of data active, that database
7 is checked. The litigation claims database
8 is checked. we get notified by big boxes
9 such as Home Depot and Wal-Mart if there's
10 any customer complaints that come in with
11 respect to injuries. And we of course get
12 CPSC reports, consumer product safety
13 commission reports, that are forwarded to our
14 company if there's any consumer complaints.

15 Q. Now, do you know if there were any
16 claims received regarding the 303, 304 or
17 304P other than pinching that you
18 described --

19 A. Hmm-hmm.

20 Q. -- with regard to lacerations to

200607.txt
21 the hand or fingers from the reciprocating
22 saws?

23 A. On the 304, and I don't have the
24 date, but by the file number this goes back a
25 long time, the allegation in our database for

42

1 MITROU
2 a person named Moore, M-O-O-R-E, alleged that
3 he cut his finger, the disposition of that
4 claim is that the statute expired and it was
5 not pursued.

6 There was another case or, excuse
7 me, claim by a gentleman named Weller,
8 W-E-L-L-E-R, where the alleged injury was the
9 hand contacted blade, that was settled for
10 three hundred twenty-three dollars. Those
11 are the only allegations that fit your
12 criteria of a possible cut.

13 Q. Those were for the 304?

14 A. Both of those that I just mentioned
15 was for the 304, yes, sir.

16 Q. Do you retain in your database the
17 name and address of the persons who make
18 these claims?

19 A. I believe we do. I'm not exactly
20 sure how far our electronic database goes
21 back, so I would have to check to see if that
22 information was in these.

23 Q. When were these claims made?

24 A. I did not write the dates down, I
25 can provide those for you.

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□

43

1 MITROU

2 Q. REQ well, what we need is the date
3 of the claim, name and address and telephone
4 number of the person making the claim, and
5 any writing or recording, whether tape
6 recording or written notation, of any claim
7 made, what the person said.

8 A. Sure.

9 Q. REQ we're going to need that with
10 regard to Moore and with regard to Weller,
11 okay.

12 A. Sure.

13 Q. Now, with regard to Weller, was
14 there a legal claim, a formal legal claim,
15 filed by Moore like a complaint?

16 MR. CALINOFF: The response was
17 that the statute of limitations expired?

18 A. The statute expired on Moore,
19 right.

20 Q. So was a claim then filed and then
21 dismissed?

22 A. A claim was filed to our department
23 and it was settled for three hundred
24 twenty-three dollars.

25 Q. That was Weller?

□

44

1 MITROU

2 A. Yes, sir.

200607.txt

3 Q. But Moore?

4 A. In Moore the claim was filed, it
5 was denied, it was not pursued by the
6 claimant, the statute expired.

7 Q. Now, you're referring to refresh
8 your recollection or to refer to a document
9 which is, I guess, a printout from your
10 database regarding claims?

11 A. Yes, sir.

12 MR. DURST: Can we mark that?

13 MR. CALINOFF: I'd like to see it.

14 I have no problem. I'd like to redact
15 the information regarding other claims
16 that don't relate to lacerations. I can
17 have somebody make a copy of it and
18 redact it right now if you want, John.

19 MR. DURST: But I don't really want
20 to do that. Because it's relevant to me
21 if claims were made with regard to the
22 pinching area as well.

23 MR. CALINOFF: Why is that?

24 MR. DURST: I don't see a
25 distinction between coming into contact

□

45

1 MITROU
2 with the blade while it's moving in
3 front of the cage or at the cage, it's
4 still beyond the neck.

5 MR. CALINOFF: I'll allow it to be
6 marked.

7 MR. DURST: Over your objection, I
Page 38

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8 understand.

9 (Plaintiff's Exhibit 3, Claims
10 List, marked for identification, as of
11 this date.)

12 Q. With regard to the pinching claims
13 that were made, that pinching occurred while
14 the blade was in motion, correct, just to
15 refresh --

16 A. Yes.

17 Q. Any indication what the users were
18 trying to do that resulted in their fingers
19 coming into that area?

20 A. Not that I specifically recall
21 without reviewing all the cases, if they are
22 available.

23 Q. REQ this list indicates a file
24 number, and what I'm going to call for is a
25 copy of each of these files with regard to

□

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1 MITROU
2 anything provided to your company and any
3 responses that you made to the claimant. And
4 I will be happy to pay for the copying of
5 these files. If they are electronic format,
6 I'll take them in electronic format if you
7 scan your files in. But I'm going to want to
8 look at these files.

9 MR. CALINOFF: John, just for the
10 record, my experience in representing
11 the company the fact that there's case

200607.txt
12 information available in the database
13 doesn't mean that the file still
14 physically exists. There's a document
15 retention program, and some of those
16 documents, depending on age, may still
17 physically exist, others may not.

18 Is that a fair statement.

19 THE WITNESS: Yes, that's actually
20 true.

21 Q. What is your document retention
22 procedure in the claims department?

23 A. Well, it's a bit of a complicated
24 one that I can't dictate to you, it depends
25 on the nature of the claim, the settlement

1

47

If you look at those numbers and you see numbers that are in the threes thirty-two's, the thirty-nine, etc., those are extremely old cases. I don't know what the highest number there is, but they are basically numerical and they represent that chronologically. So the numbers that have the high forties numbers are the most recent, the low thirties numbers they could be twenty years old, they could be fifteen years old. I

200607.txt

17 just don't know. The dates are available, I
18 just did not put them down.

19 Q. Are the 304 and 303 still on the
20 market?

21 A. I'm not sure.

22 Q. How about the 305 and the 306, are
23 they on the market?

24 A. I don't believe so.

25 Q. What was the difference between

□

48

1 MITROU

2 them and the 304P?

3 A. Well, the 304P is in a category of
4 its own as far as the four blade position.
5 All the other ones on that list are
6 effectively the same design with some minor
7 marketing modifications. Clearly from what
8 is at issue here from a motor case forward
9 they are all extremely similar.

10 Q. Same neck basically?

11 A. Yes.

12 Q. Is there anything that we haven't
13 discussed that you take into consideration at
14 the safety review of a product such as the
15 304P?

16 MR. CALINOFF: Objection to form.

17 You can answer.

18 A. Very broad question.

19 Q. Can you think of anything that we
20 have not discussed so far that you take into

21 consideration at the safety review?

22 MR. CALINOFF: Same objection.

23 A. Well, we've discussed the input
24 from the claims department with respect to
25 potential, not potential, but previous

□

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1 MITROU
2 injuries; we discussed feedback from the
3 service organizations; the one eight hundred
4 numbers; we discussed information that might
5 come from a CPSC; anytime our marketing folks
6 hear of course of any kind of dissatisfied
7 customer that is brought forward in these
8 meetings; very, very heavily dependent upon
9 is the history and experience of the people
10 in the review, we always assure that we have
11 senior people that participate in those
12 reviews; and certainly from a safety
13 standpoint the history of the predecessor of
14 the product that's either being modified or
15 redesigned weighs heavily in the review.
16 That's what I can think of now, perhaps
17 there's a few other things.

18 Q. With regard to the one eight
19 hundred reports, have you undertaken any kind
20 of search to determine if there were any one
21 eight hundred reports of injuries involving
22 the 303, 304, 304P, 305 or 306?

23 A. I have not done that actively.
24 However, there are standing orders with that
25 organization that whenever there's any type

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1 MITROU
2 of call that involves shock, injury, fire, I
3 mean any of those kinds of things they
4 immediately forward it to us, and I have no
5 recollection of receiving any of those in
6 recent memory.

12 Q. Exhibit 3 is formal claims?

13 A. It's a formal claims summary.

14 Q. It's not just reported incidents?

15 A. No, those are formal -- those are
16 claims that are formally submitted, not a
17 random phone call that somebody calls up and
18 says, you know --

19 Q. Well, with regard to the phone
20 calls, what record is kept of those?

21 A. They are kept electronically for
22 eighteen months.

23 Q. Where are they kept, in Maryland?

24 A. On a computer.

25 Q. In Maryland I mean, India?

1

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1 MITROU

2 A. I believe our one eight hundred

200607.txt
3 center is still in Maryland, things have
4 switched around a little bit recently as we
5 acquired some companies, but I believe that
6 it's still in Maryland.

7 Q. Well, if you were to do a search on
8 these products, 303 through 306, for any
9 calls regarding those items, have you ever
10 done that kind of thing before, done that
11 kind of search?

12 A. On these particular tools?

13 Q. No, on any tools.

14 A. oh, of course.

15 Q. What is entailed, just searching a
16 particular field on the computer?

17 A. We would either call or e-mail the
18 one eight hundred group and we would say one
19 of two things, more often if we're calling
20 them to get information, more often than not,
21 we will say give us a full dump of everything
22 you have which basically is eighteen months.
23 If something is very specific, let's say for
24 argument sake say something not incriminating
25 like a Black and Decker logo was falling off

1 MITROU
2 the tool, how's that for not being
3 incriminating, then we can say do a search on
4 the word logo, and they would pick up all
5 those records. So we can do any kind of
6 multiple search that might fit a search
7 criteria.

200607.txt

8 Q. REQ what I'm going to ask for here
9 is a full dump as you referred to it with
10 regard to the 303, 304, 304P and 305 and 306.
11 That's something that could be done just by
12 telling them to type in those numbers and it
13 would search all those fields and print out
14 exactly what they have with regard to those,
15 right?

16 A. Yes, sir.

17 Q. REQ I'm going to ask, if it's
18 possible, this is the benefit of computers
19 and this is why we have them, is to make that
20 not a very onerous task.

21 MR. CALINOFF: John, I'm going to
22 take that under advisement. If you want
23 to limit it, there are going to be
24 perhaps electrical claims that have
25 nothing to do with this case.

□

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1 MITROU

2 A. There's requests for parts, there's
3 everything from I lost my instruction manual
4 to how do you turn the tool on.

5 MR. CALINOFF: It is onerous
6 insofar as myself, people in the legal
7 department at Black and Decker, if there
8 are a lot of these where people are
9 asking for a new box, new cardboard box,
10 the latch on the plastic case broke,
11 hardly relevant here. Especially in

12 200607.txt
view of the fact that the computer can
13 make a specific search, you know what
14 you're looking for.

15 Q. How about this then, would we be
16 able to narrow it down to injuries?

17 A. We could do a search that would --
18 if you give us the keywords you would like to
19 have of interest such as injury, guard, cut,
20 laceration, those are the kinds of words,
21 then it certainly is a reasonable thing to
22 request here.

23 Q. REQ how about this, I'm going to
24 try to do this right now and you tell me if
25 this works. How about if we do 303 or 304 or

□

54

1 MITROU
2 305 or 306 (injury or cut or laceration or
3 pinch.)

4 A. I think clearly and honestly that
5 would flush out what you're looking to see.

6 Q. It would get rid of the extraneous
7 stuff you think?

8 A. Yes. Not to play games with what
9 you said but I'm sure you want to include the
10 304P.

11 Q. Correct, exactly. That wouldn't be
12 too onerous, would it?

13 A. We'll take it under advisement with
14 counsel, but I think that's a more reasonable
15 request.

16 Q. You'd want to know that as well,
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17 right?

18 Then you have the big company
19 reports, the retailer reports, right, you
20 mentioned Wal-Mart or Home Depot?

21 A. I never said we get reports from
22 them. What I said was if they have a
23 specific customer complaint that they feel
24 the need to pass along to us that's another
25 source of information that we obviously would

□

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1 MITROU

2 absorb in due course of business. There's
3 not a monthly report or weekly report or
4 anything like that, no.

5 Q. Where would those kinds of reports
6 be received?

7 A. Well, they could come in through a
8 couple of different channels to be honest
9 about it. They could come in through a
10 marketing in sales organization, they could
11 come directly to our litigation department.
12 I mean ultimately, ultimately, they would end
13 up one way or the other in our hands.

14 Q. But they wouldn't be recorded as
15 part of the claims database?

16 A. No, sir.

17 Q. Is there some kind of a database
18 you keep with regard to those reports?

19 A. I don't believe there's any
20 electronic filing of those.

21 Q. Might they be kept in a paper file?

22 A. I don't know, I honestly don't
23 know.

24 Q. REQ well, with regard to the same
25 search criteria, if you could use that search

□

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1 MITROU
2 criteria to determine any reports, oral or
3 written, that were received from retailers or
4 wholesalers or distributors, I would
5 appreciate that.

6 Now, with regard to the consumer
7 product safety commission. Has there been
8 any reports you've received, forwarded or
9 originating with the consumer product safety
10 commission with regard to those five models?

11 A. Not to my recollection.

12 Q. Is that something that would be
13 kept separate from the claims database?

14 A. Yes.

15 Q. Is there some type of a database
16 where that would be kept?

17 A. I believe that copies of those,
18 formal copies of those, are kept either in
19 our department or by Miles & Stockbridge. So
20 I believe those aren't kept electronically
21 but they are tracked through our legal
22 department.

23 REQ MR. DURST: I would ask for any
24 inquiries or reports or writings with
25 regard to those five models that were

200607.txt

10 Q. Is that all right?

11 A. It's all right.

12 Q. Subject to your counsel --

13 A. Subjects to my counsel's approval.

14 MR. CALINOFF: We'll take it all
15 under advisement.

16 Q. It's basically just a request that
17 goes out to a particular -- first you have to
18 identify the particular person who would
19 maintain those records, right, and then a
20 request to them to gather the records?

21 A. I understand.

22 Q. Is that correct?

23 A. I understand.

24 Q. Depending on their filing skills it
25 would be doable, depending on their filing

1 MITROU
2 skills.

200607.txt

3 MR. DURST: I have no further
4 questions. I appreciate your patience.
5 (Time noted: 11:45 a.m.)

6

7 TED MITROU

8

9 Subscribed and sworn to before me
10 this ____ day of _____, 2008.

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1 MITROU

2 C E R T I F I C A T E

3 STATE OF NEW YORK)

4 : ss.

5 COUNTY OF QUEENS)

6

7 I, CHRISTINE MORELLA, a Notary
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8 Public within and for the State of New
9 York, do hereby certify:

10 That TED MITROU, the witness whose
11 deposition is hereinbefore set forth,
12 was duly sworn by me and that such
13 deposition is a true record of the
14 testimony given by the witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, and that I
18 am in no way interested in the outcome
19 of this matter.

20 IN WITNESS WHEREOF, I have hereunto
21 set my hand this 11th day of February,
22 2008.

23

24

25 CHRISTINE MORELLA

1

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